

# DELRS 2010 - FLSA CASE LISTING

## DESK AUDIT VS. PERFORMANCE PLAN

Dept of Commerce, NOAA, Office of Marine & Aviation, Operation Marine Opns. Center, VA and IBEW, Local 80, 57 FLRA No. 77, July 24, 2001. A key determination in classification as exempt/non-exempt is actual duties performed. Dicta that the agency could prospectively revise assignments to reflect the exempt duties in the plan did not exceed the arbitrator's authority.

## ALTERNATIVE WORK SCHEDULES (AWS) – FLEXITOUR WITH CREDIT HOURS

NTEU and Dept of Treasury, IRS, 57 FLRA No. 123 Dec. 14, 2001. Although the parties are authorized to negotiate alternative work schedules, earning credit hours is voluntary. When ordered to travel, employee travel time cannot be compensated with credit hours absent legislative authority.

## FLEXIPLACE – WORK AT HOME (BACK PAY ACT VS. FLSA)

SSA, Office of Hearings and Appeals and AFGE, Local 3615, 55 FLRA No 56, March 31 1999.

Denial of opportunity to work at home – appropriate remedy? Agency alleged that the Flexiplace pilot expired, notwithstanding several employees continuing to work at home. Agency denial resulted in lost opportunity to work 17 hours overtime per week. Remedy was consistent with the Back Pay Act “unwarranted and unjustified personnel action”. But violation of the CBA did not warrant an FLSA remedy of liquidated damages where there is no evidence that the FLSA was violated. The employee did not actually work in excess of 40 hours a week, but was denied the opportunity to work over 40 hours.

## FLSA – PORTAL TO PORTAL EXCEPTION

Navy, Supv. of Shipbuilding and Repair, Pascagoula, MS and NAGE, Local R5-125, 57 FLRA No. 159, Apr. 18, 2002. Agency scheduled employee official travel on a weekend; as a result they were compensated only for hours corresponding to their regular work hours (less than 8 hours). Employees alleged that CBA was violated when the agency did not schedule travel during workweek when the employees would have been compensated for 8 hours. The arbitrator awarded the OT that the employees would have received for the desired flight. The employees were awarded overtime they were denied as a result of the contract violation based on the Portal to Portal exception to the FLSA, and although the Authority found the rationale confusing; it did not find the award itself deficient.

## DRIVER/PASSENGER ENTITLEMENT TO OVERTIME PAY WHILE TRAVELING IN GOVT. VEHICLE

IFPTE, Local 529 and US Army Corps of Engineers, Memphis District, 57 FLRA No. 174, May 21, 2002

Vessel Crew members driving government vehicle (but not passengers) entitled to overtime pay. Crew members also sought liquidated damages and attorney fees.

## APPLICATION OF FLSA TO OVERSEAS DEPLOYMENTS

Army, 10<sup>th</sup> Mountain Division, Ft. Drum, NY and NAGE, Local R2-61, 56 FLRA No. 132. Whether danger pay allowance is included in basic pay for purpose for computing overtime. TDY assignment overseas (Bosnia) was exempt from FLSA, and OPM regulations governed. Danger pay not included in computation.

NAGE, Local R14-52 and Army, Red River Army Depot, Texarkana, TX, 46 FLRA No. 60, Nov. 23, 1992. Was the event that led to TDY (Saudi Arabia) administratively uncontrollable and was work performed under arduous conditions, such that FLSA did not apply?

#### EXEMPT VS. NON-EXEMPT – BURDEN OF PROOF

Naval Surface Warfare Center, Crane IN and AFGE, Local 1415, 49 FLRA No. 6, Feb. 4 1994. When agency presents credible documentary and testimonial evidence to support its determination and arbitrator finds that the union presented no rebuttal evidence, the decision rests on a factual matter. Union's exception was a mere disagreement with the arbitrator's award.

#### PRE AND POST SHIFT WORK

DOJ, Bureau of Prisons, Metropolitan Correctional Center, Chicago, IL and AFGE Local 3652, Council of Prison Locals, 63 FLRA No. 127. Picking up and returning equipment, compensable. Waiting for elevators – NOT!

#### SETTLEMENT AGREEMENTS – NO AMBIGUITY, PLEASE

Naval Sea Systems Command and IFPTE, 57 FLRA No. 95, Sept. 28, 2001. Arbitrator award in favor of grievants, sustained. The parties negotiated a Global Memorandum of Understanding (Global MOU), covering GS-12 employees who were erroneously classified as exempt. The MOU provided that they would get the difference between what they received as overtime compensation under Title 5 and what overtime they would have received under the FLSA. They had received compensatory time under Title 5 and the grievance questioned whether they should have received any additional compensation. The agency argued that only those who were paid overtime should receive overtime pay, not those who were received compensatory time. The union's position was that all employees should receive the difference between straight time (compensatory time taken) and overtime. The FLSA provides for compensatory time AT THE EMPLOYEE'S ELECTION. MOU language was unclear as to whether employees had the opportunity to elect compensatory time.

#### ATTEMPT TO AMEND OR REPUDIATE PRIOR FLSA GRIEVANCE SETTLEMENT

AFGE Council 170, Local 2128 and DCMA, Hurst TX, 58 FLRA No. 78, Jan. 24, 2003. Some employees and a new union president challenged the terms and legality of the settlement. DENIED!

#### REPRESENTATIONAL ACTIVITIES BY UNION OFFICIALS RARELY QUALIFY FOR OVERTIME

Warner Robins Air Logistics Center and AFGE Local 987, 23 FLRA 270 (1986). An individual representing a union in grievance meetings or negotiations is not entitled to overtime compensation. The

representation is for the union and it is not for the primary benefit of the government as the employer. Only if the representation takes places during a time when the employee is already in an overtime status would overtime for the representation work be compensable.

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